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UNITED STATES DISTRICT COURT  
NORTHERN DISTRICT OF CALIFORNIA

VIRGIN RECORDS AMERICA, INC., a  
California corporation; UMG RECORDINGS,  
INC., a Delaware corporation; SONY BMG  
MUSIC ENTERTAINMENT, a Delaware  
general partnership; WARNER BROS.  
RECORDS INC., a Delaware corporation; and  
BMG MUSIC, a New York general partnership,  
Plaintiffs,

v.

JOHN DOE,  
Defendant.

CASE NO. 07

6032

**EX PARTE APPLICATION FOR LEAVE  
TO TAKE IMMEDIATE DISCOVERY**

1 Plaintiffs, through their undersigned counsel, pursuant to Federal Rules of Civil Procedure 26  
2 and 45, the Declaration of Carlos Linares, and the authorities cited in the supporting Memorandum  
3 of Law, hereby apply *ex parte* for an Order permitting Plaintiffs to take immediate discovery.

4 In support thereof, Plaintiffs represent as follows:

5 1. Plaintiffs, record companies who own the copyrights in the most popular sound  
6 recordings in the United States, seek leave of the Court to serve limited, immediate discovery on a  
7 third party Internet Service Provider ("ISP") to determine the true identity of Defendant, who is  
8 being sued for direct copyright infringement.<sup>1</sup>

9 2. As alleged in the complaint, Defendant, without authorization, used an online media  
10 distribution system to download Plaintiffs' copyrighted works and/or distribute copyrighted works to  
11 the public. Although Plaintiffs do not know the true name of Defendant, Plaintiffs have identified  
12 Defendant by a unique Internet Protocol ("IP") address assigned to Defendant on the date and time  
13 of Defendant's infringing activity.

14 3. Plaintiffs intend to serve a Rule 45 subpoena on the ISP seeking documents that  
15 identify Defendant's true name, current (and permanent) address and telephone number, e-mail  
16 address, and Media Access Control ("MAC") address. Without this information, Plaintiffs cannot  
17 identify Defendant or pursue their lawsuit to protect their copyrighted works from repeated  
18 infringement.

19 4. Good cause exists to allow Plaintiffs to conduct this limited discovery in advance of a  
20 Rule 26(f) conference where there are no known defendants with whom to confer.

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22  
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25  
26 <sup>1</sup> Because Plaintiffs do not yet know Defendant's true identity, Plaintiffs are unable to  
27 personally serve Defendant with a copy of this motion. Instead, Plaintiffs will serve the Clerk of  
28 Court pursuant to Fed. R. Civ. P. 5(b)(2)(C) ("If the person served has no known address, [service  
under Rule 5(a) is made by] leaving a copy with the clerk of the court.") and will serve Defendant's  
ISP with a copy of this motion. Additionally, if the Court grants this motion, Plaintiffs will ask the  
ISP to notify the Defendants of the subpoena and provide Defendant with an opportunity to object.

1 WHEREFORE, Plaintiffs apply *ex parte* for an Order permitting Plaintiffs to conduct the  
2 foregoing requested discovery immediately.

3  
4 Dated: November 29, 2007

HOLME ROBERTS & OWEN LLP

5  
6 By: 

MATTHEW FRANKLIN JAKSA  
Attorney for Plaintiffs  
VIRGIN RECORDS AMERICA, INC.;  
UMG RECORDINGS, INC.; SONY BMG  
MUSIC ENTERTAINMENT; WARNER  
BROS. RECORDS INC.; and BMG  
MUSIC